

Kristin Zilberstein, Esq., (SBN 200041)
Jennifer R. Bergh, Esq., (SBN 305219)
LAW OFFICES OF MICHELLE GHIDOTTI
1920 Old Tustin Ave.
Santa Ana, CA 92705
Tel: (949) 427-2010
Fax: (949) 427-2732
Email: KZilberstein@ghidottilaw.com

Attorneys for Creditor
U.S. Bank Trust National Association as Trustee of the Bungalow Series III Trust, its
successors and assigns

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA – OAKLAND DIVISION

In re:)	Case No. 18-41947
)	
Billy James Phillips)	
Debtor.)	Chapter 13
)	
)	OBJECTION TO CONFIRMATION OF
)	CHAPTER 13 PLAN
)	
)	Honorable William J. Lafferty
)	
)	Meeting of Creditors
)	DATE: October 4, 2018
)	TIME: 9:00 a.m.

///

1 TO THE HONORABLE WILLIAM J. LAFFERTY, UNITED STATES
2 BANKRUPTCY JUDGE, THE DEBTOR, HIS ATTORNEY OF RECORD AND THE
3 CHAPTER 13 TRUSTEE, MARTHA G. BRONITSKY:

4 COMES NOW U.S. Bank Trust National Association Igloo Series III Trust (“**Creditor**”),
5 a secured creditor of the above-named Debtor, and files the within Opposition (“**Opposition**”) to
6 the confirmation of the Debtor’s Billy James Phillips (“**Debtor**”) Chapter 13 Plan (the “**Plan**”).

7 **I.**

8 **STATEMENT OF FACTS**

9 1. On or about March 26, 2007 Debtor, for valuable consideration, made, executed and
10 delivered to World Savings Bank, FSB, a Note (the “**Note**”) with an original principal balance in
11 the amount of \$250,000.00 (the “**Loan**”).

12 2. Said Note is secured by a Deed of Trust (“**Deed of Trust**”), which encumbers the real
13 property commonly known as 2248 E 22nd St, Oakland, CA 94606 (the “**Property**”) dated
14 March 26, 2007, and recorded April 13, 2007 as Document No.: 2007-142773 in the Official
15 Records of Alameda County, California, naming World Savings Bank, FSB as the Beneficiary.

16 3. All rights, title, and interests in the Note and Deed of Trust were thereafter assigned to
17 SRP 2013-9 Funding Trust.

18 4. Creditor holds all rights, title and interests in the Note and Deed of Trust.

19 5. On or about August 22, 2018, Debtor filed a voluntary Petition under Chapter 13 of the
20 Bankruptcy Code in the United States Bankruptcy Court, Northern District of California, Case
21 No.: 18-41947 (the “**Instant Petition**”).
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6. On or about August 22, 2018, the Debtor filed a Chapter 13 Plan on August 22, 2018 in which Debtor proposes to cure arrears in the amount of \$36,363.08, and tender direct payments to Creditor.

7. The total arrears owed to Creditor total no less than \$61,977.05 as will be reflected on Creditor's timely filed proof of claim.

8. The post-petition payment owed to Creditor is no less than \$1,679.60.

9. The total principal balance owed to Creditor totals no less than \$331,426.00.

I.

ARGUMENT

Application of the provisions of *11 United States Code Section 1325* determines when a Plan shall be confirmed by the Court. Based on the foregoing, as more fully detailed below, the Plan cannot be confirmed as proposed because the Plan does not comply with the provisions of Chapter 13 of the United States Bankruptcy Code.

A. IMPERMISSIBLY MODIFIES CREDITOR’S RIGHTS

11 U.S.C. §1322(b)(2)

The Plan modifies the rights of a creditor whose claim is secured only by a security interest in real property that is Debtor's principal residence in violation of 11 U.S.C. §1322(b)(2) by: not providing for cure of all of Creditor's arrears. The Debtor's Plan does not provide for the cure of Creditor's arrears in full. The Debtor must provide for the cure of Creditor's arrears in full, in the amount of \$61,977.05.

B. PROMPT CURE OF PRE-PETITION ARREARS

11 U.S.C. §1322 (d)

The pre-petition arrears owed to Creditor are no less than \$61,977.05. In order to cure the Creditor's pre-petition arrears in sixty (60) months as proposed, Debtor's monthly plan

1 payment to Creditor must total no less than \$1,032.95. Debtors' Plan understates the amount
2 owed to Creditor. Therefore, Debtor's Plan fails to provide for prompt cure of Creditor's pre-
3 petition arrears.

4 WHEREFORE, Creditor objects to confirmation of the Plan and requests as follows:

- 5 a. The Plan be denied confirmation and the case be dismissed.

6 DATED: September 27, 2018

THE LAW OFFICES OF MICHELLE GHIDOTTI

7 By: /s/ Kristin Zilberstein Esq.

8 Kristin Zilberstein, Esq.

9 Attorney for U.S. Bank Trust National Association
as Trustee of the Bungalow Series III Trust

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1 Michelle R. Ghidotti-Gonsalves, Esq. (SBN 232837)

2 Kristin A. Zilberstein (SBN 200041)

3 Jennifer R. Bergh, Esq. (SBN 305219)

4 LAW OFFICES OF MICHELLE GHIDOTTI

5 1920 Old Tustin Ave.

6 Santa Ana, CA 92705

7 Ph: (949) 427-2010

8 Fax: (949) 427-2732

9 mghidotti@ghidottilaw.com

10 Attorney for Creditor

11 U.S. Bank Trust National Association, as Trustee of the Bungalow Series III Trust, its
12 Successors and Assigns

13 UNITED STATES BANKRUPTCY COURT

14 NORTHERN DISTRICT OF CALIFORNIA – OAKLAND DIVISION

15 In Re:) CASE NO.: 18-41947

16 Billy James Phillips,)
17) CHAPTER 13

18 Debtors.) **CERTIFICATE OF SERVICE**
19)
20)
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CERTIFICATE OF SERVICE

23 I am employed in the County of Orange, State of California. I am over the age of
24 eighteen and not a party to the within action. My business address is: 1920 Old Tustin Ave.,
25 Santa Ana, CA 92705.

26 I am readily familiar with the business's practice for collection and processing of
27 correspondence for mailing with the United States Postal Service; such correspondence would
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1 be deposited with the United States Postal Service the same day of deposit in the ordinary
2 course of business.

3 On September 27, 2018 I served the following documents described as:

4
5 • **OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN**

6 on the interested parties in this action by placing a true and correct copy thereof in a sealed
7 envelope addressed as follows:

8 (Via United States Mail)

9 10 11	Debtor Billy James Phillips 2242 East 22nd Street Oakland, CA 94606	Chapter 13 Trustee Martha G. Bronitsky P.O. Box 5004 Hayward, CA 94540
12 13 14	Debtor's Counsel Jason Vogelpohl Central Coast Bankruptcy, Inc. 532 Pajaro St. Salinas, CA 93901	U.S. Trustee Office of the U.S. Trustee/Oak Phillip J. Burton Federal Building 450 Golden Gate Ave. 5th Fl., #05-0153 San Francisco, CA 94102

15
16 xx (By First Class Mail) At my business address, I placed such envelope for deposit with
17 the United States Postal Service by placing them for collection and mailing on that date
following ordinary business practices.

18 _____ Via Electronic Mail pursuant to the requirements of the Local Bankruptcy Rules of the
19 Eastern District of California

20 xx (Federal) I declare under penalty of perjury under the laws of the United States of
21 America that the foregoing is true and correct.

22 Executed on September 27, 2018 at Santa Ana, California

23 /s/ Jeremy Romero
24 Jeremy Romero